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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,797	07/22/2003	Robert Ginsburg	RADNT-012GC2	7464

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EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,797

Applicant(s)

GINSBURG, ROBERT

Examiner

Matthew F DeSanto

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3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/22/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. With regards to claim 21, the examiner does not understand the limitations being claimed on line 3, "which define and chamber and heating or cooling..." and therefore asks the applicant to amendment or clarify the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 16-18, 21, 22, 24, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Jinotti (USPN 3902635)

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Jinotti teaches a system that comprises a volume of fluid, a temperature altering device in close proximity to the volume of fluid to heat or cool the volume of fluid to a desired temperature, a positive pressure device to place the volume of fluid under positive pressure while at the desired temperature; and a transfer member to transfer at least some of fluid into the patient while at the desired temperature and in the housing there are inner walls which define a chamber, wherein the fluid is held within the chamber, and wherein the housing includes temperature altering elements to heat or cool the inner walls of the housing to alter the temperature of the fluids, wherein the element is electrical resistors. (Col. 2, lines 50-63, Col. 3, lines 9-43, Fig. 2 and 6)

Jinotti also discloses having a positive pressure device comprising a plate and a compressor for moving the plate against the volume of the fluid to compress the fluid and where the compressor consists of springs. (Fig. 6)

6. Claims 16-18, 20, 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walda (USPN 4,249,923)

Walda discloses a system that comprises a volume of fluid, a temperature altering device in close proximity to the volume of fluid to heat or cool the volume of fluid to a desired temperature, a positive pressure device to place the volume of fluid under positive pressure while at the desired temperature; and a transfer member to transfer at least some of fluid into the patient while at the desired temperature and wherein the temperature altering device comprises a cooler, and wherein the desired temperature is within the range from about 0° C to about 35° C. (Col. 1, lines 55-65, Col. 2, lines 20-60, Figs. 1,2 and 6).

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7. Claims 16-19, 21, 23, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Teves (USPN 5,125,900).

Teves discloses a system that comprises a volume of fluid, a temperature altering device in close proximity to the volume of fluid to heat or cool the volume of fluid to a desired temperature, a positive pressure device to place the volume of fluid under positive pressure while at the desired temperature (Column 2, lines 26-36, and lines 41-48); and a transfer member to transfer at least some of fluid into the patient while at the desired temperature within the range from about 36° C to about 42° C. (Column 2, lines 66-68),

Further comprising a reservoir for holding the volume of fluid, wherein the transfer member is operably connected to the reservoir, and further comprising a flow regulator to regulate the flow of the fluid from the reservoir and into the transfer member, and wherein the reservoir comprises a compressible bag. (Column 2, lines 41-57), wherein the volume of fluid is selected from the group of fluids consisting of blood, saline solutions, drugs and solutes. (Column 2, lines 34-36).

8. Claims 16-18, 21, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Cartledge (USPN 5,840,068).

Cartledge discloses a system that comprises a volume of fluid, a temperature altering device in close proximity to the volume of fluid to heat or cool the volume of fluid to a desired temperature, a positive pressure device to place the volume of fluid under positive pressure while at the desired temperature. (Column 4, lines 24-34, column 5, lines 15-35).

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Further comprising a reservoir for holding the volume of fluid, wherein the transfer member is operably connected to the reservoir, and further comprising a flow regulator to regulate the flow of the fluid from the reservoir and into the transfer member, wherein the flow regulator comprises a controller, which regulates the application of pressure from the positive pressure device. (Column 4, lines 35-66).

Wherein the flow regulator regulates both the rate and the volume of fluid removed from the reservoir. (Column 4, lines 4-12).

Wherein the transfer member comprises a length of tubing, and having a controller to monitor the temperature of the volume of fluid and to controller to monitor the temperature of the volume of fluid and to control actuation of the temperature-altering device. (Column 4, lines 64-67 and Column 5, lines 1-2).

Wherein the volume of fluid is selected from the group of fluids consisting of blood, saline solutions, drugs and solutes. (Column 4, lines 30)

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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10. Claims 16-25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 5,989,238. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both claim a method of infusing a fluid into a patient, wherein the method comprises providing a volume of fluid at an initial temperature, altering the temperature, and pressurizing the fluid at the desired temperature to introduce the fluid into the patient at the desired temperature.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.


Matthew DeSanto
Art Unit 3763
August 20, 2004


BRIAN L. CASLER
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